



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/471,964

12/23/1999

CYNTHIA L. BICKERSTAFF

24121-096001

8158

26225 7590 06/24/2008

FISH & RICHARDSON P.C.

P.O. BOX 1022

MINNEAPOLIS, MN 55440-1022

EXAMINER

BOUTAH, ALINA A

ART UNIT

PAPER NUMBER

2143

MAIL DATE

DELIVERY MODE

06/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/471,964	BICKERSTAFF ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ALINA N. BOUTAH	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11-15, 21-25 and 31-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 65-67 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response to the Amendment received May 7, 2008. Claims 65-67 have been newly added. Claims 1-5, 11-15, 21-25 and 31-67 are pending in the present application.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 7, 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 11-15, 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggard et al. (USPN 6,148,335) in view of Robinson et al. (USPN 6,570,867) in further view of Abraham (USPN 5,983,270).

Regarding claims 1, 11, and 21, Haggard et al. teach a method (claim 1), a system (claim 11), and a computer program (claim 21) for real-time measurement of the performance of communications on a large area network between a selected server and a plurality of users at client machines, based upon actual user experience, including: accessing a server log having user-interaction records indicative of user interactions that occur with one or more applications running on the selected server (col. 2, lines 57-63).

However, Haggard does not explicitly teach: the applications carried on communications associated with routing through nodes of the network; determining from the records, assessments of the performance of the communications experienced by the plurality of users; determining correlations between the assessments of the performance and the routings of the communications; validating the correlations based on an analysis of one or more parameters associated with the user interactions; and based on the correlations, modifying one or more of the routings to improve the performance.

In an analogous art, Robinson teaches: applications carried on communications associated with routing through nodes of the network (abstract; “routes and paths”); determining from the records, assessments of the performance of the communications experienced by the plurality of users (abstract; col. 2, line 60 to col. 3, line 23 – performance evaluation); determining correlations between the assessments of the performance and the routings of the communications (col. 2, line 60 to col. 3, line 23 – performance evaluation); and based on the correlations, modifying one or more of the routings to improve the performance (abstract; col. 2, line 60 to col. 3, line 23 – i.e. provisioning packet forwarding path).

In another analogous art, Abraham teaches validating the correlations based on an analysis of one or more parameters associated with the user interactions (col. 42, lines 45-62).

At the time the invention was made, one of ordinary skill in the art would have been motivated to combine the teachings of Robinson and Abraham with the teaching of Haggard in order to provide an improved a system for managing and monitoring paths and routes in a network.

Regarding claims 2, 12, and 22, Robinson et al. teach accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server, wherein at least one of the nodes is part of a communication path connecting one of the client machines to the selected server and outputting the access-to-server result (col. 2, lines 31-42: TRACEROUTE function).

Regarding claims 3, 13, and 23, Haggard et al. teach the method of claim 1, the system of claim 11, and the computer program of claim 21, further including generating an event notification if a selected statistical analysis value is abnormal (figures 6A-B; col. 7, lines 61-67 – col. 8, lines 1-16).

Regarding claims 4, 14, and 24, Haggard et al. teach the method of claim 1, the system of claim 11, and the computer program of claim 21, further including selecting the aggregation method from a set of aggregation methods for aggregating the user-interaction records according to a parameter (col. 7, lines 23-44).

Regarding claims 5, 15, and 25, Haggard et al. teach the method of claim 1, the system of claim 11, and the computer program of claim 21, wherein the aggregation method includes aggregation by log-file record column data value for each record from the server log (col. 6, lines 61-67 – col. 7, lines 1-15).

Claims 31-38, 40-44, 46-49, 51, 54, 55, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggard et al. in view of USPN 6,570,867 issued to Robinson et al. in further view of USPN 6,317,787 issued to Boyd et al.

Regarding claim 31, Haggard fails to teach a method as in claim 1, wherein said statistical analysis determines time for specified user access relative to a specified interval, and sorts said user access according to a number of times that the application exceeds said interval. Boyd teaches said statistical analysis determining time for specified user access relative to a specified interval, and sorts said user access according to a number of times that the application exceeds said interval (col. 2, lines 12-29; col. 6, lines 56-54). At the time the invention was made, one of ordinary skill in the art would have been motivated to combine the teaching of Boyd with the teaching of Haggard by enabling the statistical analysis to determine time for specified user access and sort said user access according to a number of times that the application exceeds said interval in order to identify trends, statistics and other information regarding traffic data (col. 4, lines 18-20), therefore, facilitating in analyzing user's experience on the network.

Regarding claims 32, 40, and 46 Haggard fails to teach a method as in claim 1, wherein said server log includes a time stamp indicating when a record was formed, a client IP address, a time taken to complete transmission, and a size of the transmission. Boyd teaches said server log including a time stamp indicating when a record was formed, a client IP address, a time taken to complete transmission, and a size of the transmission (figure 3A). At the time the invention was made, one of ordinary skill in the art would have been motivated to enable said server log to include a time stamp indicating when a record was formed, a client IP address, a time taken to complete transmission, and a size of the transmission in order to identify trends, statistics and other information regarding traffic data (col. 4, lines 18-20), therefore, facilitating in analyzing user's experience on the network.

Regarding claims 33 and 41, Haggard fails to teach a method as in claim 32, wherein said server log is formed by adding new data entry to the server log, and said server log is closed to further data entry prior to said performing. Boyd teaches said server log being formed by adding new data entry to the server log, and said server log is closed to further data entry prior to said performing (figures 5-7). At the time the invention was made, one of ordinary skill in the art would have been motivated to for said server log by adding new data entry to the server log in order to collect new information so that it can be analyzed, and closing the server log prior to said performing in order prevent new information which could potentially effect statistical analysis of the traffic data.

Regarding claims 34, 42 and 47, Haggard fail to expressly teach a method as in claim 32, wherein said aggregating comprises determining a geographic location from the IP address, and aggregating IP addresses having a specified relationship with a specified geographical location. Boyd teaches said aggregating comprises determining a geographic location from the IP address, and aggregating IP addresses having a specified relationship with a specified geographical location (col. 3, lines 48-59; col. 4, lines 26-45; col. 5, lines 66-67 – col. 6, lines 1-10). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to determine a geographic location from the IP address, and aggregating IP addresses having a specified relationship with a specified geographical location in order to analyze and produce statistical reports and summaries by way of user activity (col. 4, lines 64-67 – col. 5, lines 1-5).

Regarding claim 35, Haggard fails to teach a method as in claim 32, further comprising aggregating said time bins into chronological order and determining trends among said time bins. Boyd teaches aggregating said time bins into chronological order and determining trends among send time bins (Abstract; col. 6, lines 42-55). At the time the invention was made, one of ordinary skill in the art would have been motivated to aggregate said time bins into chronological order in order to facilitate the analyzer in producing statistics and other information regarding traffic data (col. 4, lines 18-20), therefore, facilitating in analyzing user's experience on the network.

Regarding claim 36, Haggard fail to teach a method as in claim 32, further comprising using said information to compute byte density, transfer rate, and error fraction. Boyd teaches



using said information to compute byte density, transfer rate, and error fraction (table 1, col. 5, lines 30-44). At the time the invention was made, one of ordinary skill in the art would have been motivated to compute byte density, transfer rate, and error fraction in order to identify trends, statistics and other information regarding traffic data (col. 4, lines 18-20), therefore, facilitating in analyzing user's experience on the network.

Regarding claims 37, 43 and 48, Haggard fails to teach a method as in claim 32, wherein said statistical analysis is an assessment of performance related measurement against a geographical location of a client. Boyd teaches said statistical analysis being an assessment of performance related measurement against a geographical location of a client (col. 3, lines 48-59; col. 4, lines 26-45; col. 5, lines 66-67 – col. 6, lines 1-10). At the time the invention was made, one of ordinary skill in the art would have been motivated to enable said statistical analysis being an assessment of performance related measurement against a geographical location of a client in order to facilitate in analyzing and producing statistical reports and summaries by way of user activity.

Regarding claims 38, 44 and 49, Haggard fails to teach a method as in claim 32, wherein said statistical analysis is an assessment of a route traversed during use of the network application by an end user. Boyd teaches said statistical analysis being an assessment of a route traversed during use of the network application by an end user (col. 3, lines 48-59; col. 4, lines 26-45; col. 5, lines 66-67 – col. 6, lines 1-10). At the time the invention was made, one of ordinary skill in the art would have been motivated to enable said statistical analysis as being an

assessment of a route traversed during use of the network application in order to facilitate in analyzing and producing statistical reports and summaries by way of user activity.

Regarding claims 51, 55, and 59, Haggard et al. fail to teach the method of claim 34, the system of claim 11, and the computer program of claim 21, the method of claim 6, the system of claim 16, and the computer program of claim 26, wherein determining geographical or source information for each record includes:

defining a database comprising large area network address blocks having geographical or source information;

comparing an address field in each record to the address blocks in the database; and

associating with each record the geographical or source information from an address block matching the address field of the record.

Boyd et al. teach: defining a database comprising large area network address blocks having geographical or source information (col. 4, lines 40-45).

Although Boyd et al. do not expressly teach comparing an address field in each record to the address blocks in the database; and associating with each record the geographical or source information from an address block matching the address field of the record, Boyd et al. teach a method of using analysis results collected into a log file or database for building geographic and other summaries (col. Lines 40-45). In order to determine geographical or source information, it is obvious that an address (e.g. IP address) can be somehow compared to a pre-defined address in a database that contains geographical or source information, once found, the addresses can be associated together, thus providing a geographic information.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teaching of Boyd and Haggard in order to determine geographical or source information in order to analyze and produce statistical reports and summaries by way of user activity (col. 4, lines 64-67 – col. 5, lines 1-5).

Regarding claims 54 and 58, Haggard et al. teach the system of claim 11, and the computer program of claim 21, further including: selecting an aggregation method to aggregate records (col. 7, lines 23-44). However, Haggard et al. fail to teach:

determining geographical or source information for each record; and  
selecting the aggregation method to aggregate records based on such geographical or source information.

Boyd et al. teach determining geographical or source information for each record (col. 3, lines 48-59; col. 4, lines 26-45; col. 5, lines 66-67 – col. 6, lines 1-10). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to select the aggregation method to aggregate records based on source information in order to analyze and produce statistical reports and summaries by way of user activity (col. 4, lines 64-67 – col. 5, lines 1-5).

Claims 39, 45, 50, 53, 57 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggard et al. in view Robinson, in view of Boyd, in further view of USPN 4,967,345 issued to Clarke et al.

Regarding claims 39, 45 and 50, Haggard fails to teach a method as in claim 1, further comprising determining a new path based on said results of said statistical analysis. Clarke teaches determining a best route through a network from one node to another (Abstract; col. 2, lines 4-11). At the time the invention was made, one of ordinary skill in the art would have been motivated to combine the teaching of Haggard, Boyd, and Clerk) in order to allow the administrator to monitor and regulate network traffic, thus improving the network communications performance.

Regarding claims 53, 57, and 61, Haggard et al. teach the method of claim 1, the system of claim 11, and the computer program of claim 21, including a statistical analysis of records from a server log and responding to performance data that surpasses an associated threshold (Abstract).

However, Haggard et al. fail to further teach:

determining exit routing paths from each selected server based on the records from the server log;

determining a best performing exit route based on the statistical analysis of records from the server log;

biasing incoming and outgoing communications with respect to each server to use the determined best performing exit route.

Clarke et al. teach determining a best route through a network from one node to another (Abstract; col. 2, lines 4-11). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teaching of Clark et al. (best route) and the

teaching of Haggard et al. (records from server log) in order to allow the administrator to monitor and regulate network traffic, thus improving the network communications performance.

Claims 52, 56, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggard et al. in view of Robinson, in view of Boyd, in further view of USPN 5,946,679 issued to Ahuja et al.

Regarding claims 52, 56 and 60, Haggard et al. fail to teach the method of claim 7, the system of claim 17, and the computer program of claim 27, wherein comparing an address field in each record to the address blocks in the database includes:

defining an array of binary trees for the address blocks in the database, each address block within a binary tree within an array element being masked by a corresponding unique subnet mask value;

masking each address field in each record by a unique subnet value corresponding to a selected array element;

comparing each masked address field to an address field of the address blocks within the binary tree of the selected array element;

outputting selected fields of any matching address block; and

otherwise, continuing the step of comparing with a next selected array element until a match is found or all array elements have been compared.

Ahuja et al. teach:

defining an array of binary trees for the address blocks in the database, each address block within a binary tree within an array element being masked by a corresponding unique subnet mask value (col. 3, lines 10-16);

although Ahuja et al. do not explicitly teach (k) masking each address field in each record by a unique subnet value corresponding to a selected array element, it is well known in the art that all network addresses such as IP address has a subnet mask associated with it;

comparing each masked address field to an address field of the address blocks within the binary tree of the selected array element (col. 3, lines 15-20);

outputting selected fields of any matching address block (col. 3, lines 17-20); and

otherwise, continuing the step of comparing with a next selected array element until a match is found or all array elements have been compared (col. 3, lines 17-20).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Haggard, Boyd and Ahuja in order to facilitate geographical information determination, thus facilitating user's usage statistical analysis.

Claims 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggard et al. in view of Robinson, in view of Boyd, in further view of Saksena.

Regarding claims 62-64, Haggard et al. teach a method (of claim 1), a system (of claim 11), and a computer program (of claim 21), wherein determining assessments further comprises:

accessing a server log having records of actual user access to the selected server

(Abstract);

aggregating records from the server log into a database (col. 7, lines 22-44);  
performing at least one statistical analysis of each time bin on each aggregate slot (col. 7, lines 22-44); and  
outputting the results of such statistical analysis as an indication of actual usage by users (Abstract; col. 2, lines 51-67 – col. 3, lines 1-6; col. 7, lines 23-44; figure 5).

However, Haggard et al. fail to explicitly teach: accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server, wherein at least one of the nodes is part of a communication path connecting one of the client machines to the selected server; filtering out selected records from the server log, wherein the filtering removes the selected records from further consideration; and aggregating records from the server log into a plurality of aggregate slots, each slot having at least one time bin which represents an interval of time, based on an aggregation method; and performing at least one statistical analysis separately of each time bin on each aggregate slot.

Robinson teaches accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server, wherein at least one of the nodes is part of a communication path connecting one of the client machines to the selected server and outputting the access-to-server result (TRACEROUTE).

Boyd et al. teach: aggregating records from the server log into a plurality of aggregate slots, each slot having at least one time bin which represents an interval of time, based on an aggregation method (figure 5; col. 1, lines 27-35; col. 2, lines 5-11; col. 3, lines 47-59; col. 8, lines 37-42); filtering out selected records from the server log (figures 6 and 7, no. 64); and

performing at least one statistical analysis separately of each time bin on each aggregate slot (col. 3, lines 47-59; col. 4, lines 10-25).

Saksena teaches the filtering removes the selected records from further consideration (abstract; figure 7).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to access a server log having records indicative of routings through the network of actual user access in order to calculate and monitor throughput of the network, and aggregate records into a plurality of aggregate slots having time bin and analyzing the slots separately in order to identify trends, statistics and other information regarding traffic data (Boyd, col. 4, lines 18-20), therefore, facilitating in analyzing user's experience on the network.

#### ***Allowable Subject Matter***

Claims 65-67 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not teach validating the correlations based on an analysis of one or more parameters associated with the user interactions, where in the parameters associated with the user interactions include URL count and unique IP address count.

#### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alina N Boutah/  
Examiner, Art Unit 2143